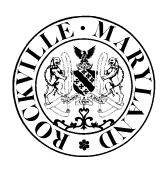# Competing Policies

Part I: Introductory Discussion

White Paper Discussion

City of Rockville, Maryland

September 27, 2005

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Competing Policies
Part I: Introductory Discussion

I. INTRODUCTION

A zoning code controls the pace and pattern of development and growth. During the course of a zoning revision, many policy decisions must be made to determine what that pattern and pace will be. Decision making within the sphere of zoning is a cumulative process. Each factor relies on the previous decision. While overarching visions (to favor rapid growth or to limit new construction) can assist revision writers, there are a number of smaller policy decisions, which build on each other, that are also essential to guide the development of the code. To facilitate the process, and to save much re-write time later, this paper asks these important questions now. These decisions will provide the analytical framework behind future staff amendments.

II. PRIORITIES ALREADY ESTABLISHED

A starting point for those decisions is to review what priorities are already laid out for a zoning revision. These priorities take the form of legislative mandates; inherent concerns of a zoning code, and master and neighborhood plan goals. All these policies reflect the desired vision of the city's citizens, either through their direct input or through the election of their legislative officials.

A. Maryland Legislative Priorities

Under the Maryland Code, Article 66B (§ 4.03), controlling land use, local zoning district regulations should be designed to meet the following priorities:

- Control congestion in the streets;
- Secure the public safety;
- Promote health and general welfare;
- Provide adequate light and air;
- Promote the conservation of natural resources;
- Prevent environmental pollution,
- Avoid undue concentration of population; and
- Facilitate the adequate provisions of transportation, water, sewerage, schools, recreation, parks and other public requirements.

In addition, regulations must be made "in accordance with the plan; with reasonable consideration for, among other things, the character of the district and its suitability for particular uses; and with a view to conserving the value of buildings and encouraging the

orderly development and the most appropriate use of land." Md. Code, Article 66B (§ 4.03).

B. Inherent Priorities

Besides legislatively mandated priorities, zoning codes have innate priorities. All zoning codes minimize one property's adverse impacts on another. A community encourages development patterns and activities that are considered desirable. Zoning also prioritizes and implements the goals of the local master or comprehensive plan and any existing neighborhood plans.

C. Master Plan Priorities

In Rockville, the Master Plan addresses six individual elements and within each element establishes goals. The elemental visions and priorities that the zoning code should reflect are:

1. **Land use** –
   a. Concentrate new growth in Town Center and near fixed transit stations;
   b. Ensure a mix of housing; and
   c. Ensure new development positively impacts the quality of life.

2. **Transportation** –
   a. Provide a multi-modal transportation system that enhances accessibility while protecting neighborhoods and the environment; and
   b. Reduce dependence on single occupying automobiles.

3. **Environment** - Integrate the protection of the environment in all public and private development and land use decisions.

4. **Community Facilities** - Continue to provide and enhance the city's community facilities.

5. **Historic Preservation** - Protect the city's physical and cultural heritage and encourage heritage tourism through historic preservation.

6. **Community Appearance and Design** - Use accepted community design principles, environmental, public art, and property maintenance standards to foster a distinct identity for Rockville.

D. Neighborhood Plans' Priorities

The Master Plan addresses each neighborhood individually and the particular concerns of each neighborhood. Though their current zoning classifications may overlap, each neighborhood has taken on a distinct character and developed individual goals applicable to them.

The following five neighborhoods are singled out because their neighborhood plans are the most current. The overarching priorities for each of these five neighborhood plans are listed below. A number of plans also include specific zoning implementation guidelines which are not provided here but which will be incorporated into the revision.

1. **Lincoln Park**
   a. Protect the stable and secure residential character of the neighborhood and provide a range of housing opportunities;
   b. Establish circulation patterns and opportunities that enhance and protect the residential neighborhood;
   c. Achieve a healthy, vibrant and sustainable environment in the neighborhood to protect and preserve the natural resources; and
   d. Use historic preservation tools to protect and preserve the cultural heritage of the neighborhood.

2. **Town Center**
   a. Create a daytime, evening, and weekend activity center that is easily identifiable, pedestrian-oriented, and incorporates a mix of uses and activities;
   b. Use urban design to establish zoning and density requirements that will assist in defining the Rockville Town Center;
   c. Provide sufficient parking for new mixed-use development and visitors;
   d. Provide an environment conductive to and supportive of living, working, shopping, and entertainment; and
   e. Accommodate a variety of densities and scales of development that are sensitive to an urban neighborhood environment and the demands of the marketplace.

3. **East Rockville**
   a. Retain the neighborhood's existing sense of identity as a quiet, secure, stable, residential neighborhood;
   b. Redevelop the Stonestreet Avenue corridor and the Rockville Metro station property with a mix of uses that is both compatible with and complementary

to the East Rockville neighborhood, including a "Main Street" development pattern to become an asset for the community;

c. Achieve a healthy, vibrant, and sustainable neighborhood that protects and enhances natural resources, in order to maximize environmental benefits and reduce or eliminate negative environmental impacts and consequences for current and future generations; and

d. Achieve a lasting resolution to transportation related issues in this neighborhood by addressing non-resident vehicular traffic management while building on the existing community assets provided by access to the Metro and alternative modes of transportation.

Concept for plaza over Rockville Pike.

4. **Rockville Pike**

a. Offer a variety of mixed-use development of retail, office, and residential opportunities that respond to the diverse needs, opportunities, and expectations of the community and encourage the cooperation between businesses and residents to support this goal;

b. Encourage the continued economic growth and vitality of the Rockville Pike Corridor;

c. Emphasize the need for balanced transportation system that encourages all modes of transportation;

d. Expand the retail, office, and residential bases affording opportunities to all Rockville residents;

e. Promote a stronger sense of identity for this area as the commercial main street of the City;

f. Protect existing residential areas and adjacent neighborhoods from encroachment of commercial land use, excessive traffic, unlawful noise, and pollution; and

g. Encourage excellence in urban design and architecture through the review of all projects to make them stand out as an overall statement of the quality and vitality of this area of the City.

5. **Twinbrook**
The Twinbrook neighborhood is in the process of drafting their neighborhood plan. The Advisory Group is currently working through the issues facing the neighborhood such as housing and transportation. A draft plan is expected sometime in the summer of 2006.

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III. POLICY ISSUES AND QUESTIONS

There are a number of interrelated policy decisions to be made in a comprehensive zoning revision. The following is only a brief list, but can be immeasurably helpful to the writers as the revision process continues. When considering the following policy issues, it should be remembered that no issue could be applied exclusively of the other. <u>Where there is a choice between two sides of a scale, staff is *not* asking that a black and white definitive choice be made; only that *guidance* be provided as towards which side to lean more heavily.</u>

The following sections list some of the policy considerations for the zoning code revision. Where a particular question is associated with the issue, the question is provided to address the concern, and start consideration of possible solutions. Particular recommendations associated with each policy issue will be included in the follow-up presentation.

A. Streamlining Processes

Throughout the code, various application processes are laid out. These steps are in some cases redundant, and in other cases are more complicated than they need to be.

Staff's primary example is a need to address opposition to building renovations earlier in the approval process. Under the current regulations, surrounding property owners are not made aware of renovations until after the applicant has invested a substantial amount of time and money. Modifications to the permit allowance at that point are difficult. Staff proposes some form of notice of application to be posted on the property and a limited time frame for neighbors to object. Initial notification can allow for neighbors to talk and mediate their problems before the applicant is heavily invested.

Solutions to streamline approval could include any/all of the following:

1. **Provide for Mayor and Council "call up" review of certain applications**. Applications already requiring Mayor and Council approval can be heard or not heard at their discretion if already approved by the Planning Commission. The following is an example process that would streamline the amount of information presented before Mayor and Council. Instead of the project automatically being verbally heard by Council, the recommendation of the Commission could be placed on the consent calendar of the Mayor and City Council within a set period of time after the Commission's review. In the case of certain applications (to be determined), three votes from Mayor and Council could be required to remove the project from the calendar and schedule it for a subsequent meeting. Otherwise, the recommendation of the Commission would stand and no hearing would be held. If the Mayor and Council votes to hear the item, a hearing would be scheduled as soon as practicable.

2. **Ensure that regulations and/or design guidelines are clear and state existing desires for development**. Clear regulations provide developers with an assumption of approval that their project can go forward if development standards are met. Case-

by-case reviews could be an option, but not the norm, and they should be aimed at enhancing flexibility and quality, not stifling it. To do this, staff would recommend consolidating the list of special development procedure approvals as much as possible.

3. **Ordinance approval process checklists and flow charts.** It should be clear to the public where to submit applications, which agency retains final approval authority, and what sequence to follow for various types of applications. Ordinances may specify the authority and responsibilities of each agency and government body involved in the approval process. Too often, ordinances outline individual stages of the approval process, but not the overall process from start to finish and how long it typically takes. The City may consider publishing process and permit flow charts either as separate brochures or guidebooks to the ordinance for distribution by a central information desk. Staff is currently in the process of updating a Development Review Process Manual for the existing code guidelines.

4. **Allow for administrative approvals**. To speed up projects by eliminating time consuming public review of routine or minor matters, the City may consider establishing the authority for administrative waivers. In this way, the level of attention is commensurate with the level of project impacts. Valuable public and private resources are thereby devoted only to the review of projects that have a significant impact on the community. Authorized under Article 66B, §4.05(D)(1), a Planning Director or another designee may grant administrative adjustments from zoning requirements. For example, though not necessarily to be included in the revision, the guidelines provided may allow staff to approve a waiver of parking requirements up to 3 spaces if the applicant is willing to preserve an established tree.

5. **Development Review conferences.** Pre-application conferences are one of the most effective tools to assist developers and homeowners with the development review process. Encouraging developers to meet informally with planning staff to present concept or sketch plans can help address issues and requirements before expensive technical and engineering work commences. Some communities require a conference; others make it voluntary. Though currently applied in the City through the Development Review Committee, these conferences are not mandatory.

ISSUES: Streamlining the approval process can speed up development, reduce the cost on both the developer's and government's side; and can thereby reduce the cost of housing. In certain situations, a streamlined process can reduce the cost of administrative time and expenditures. As stressed in the 1991 Kemp Commission report "*Not in My Back Yard": Removing Barriers to Affordable Housing*, "In most places, permits and reviews are not logical point-to-point processes, but layers of single-issue reviews, each with decisions made without regard for costs or delays."

QUESTION: If there is a means to streamline any approval process, should staff consider any / all streamlined process?

B. **Risk v. Proven Process**

Innovative solutions to problems may have undeterminable risks. As with investments, risks can have rewards that far exceed proven interests. On the other hand, by mere definition of the word, there are potential dangers.

ISSUES: Inventive solutions have developed alongside the changing problems of evolving zoning and land use policy. New solutions may better fit new problems, while older solutions may better fit older problems. On the other hand, innovative solutions are not often tested in all situations. They can have detriments associated with them that have yet to be discovered. Proven solutions, however, may not fit the needs of new issues.

QUESTION: If there is an innovative solution to a problem, should staff pursue it for the revision?

C. **New Resources v. Existing Resources**

Related to the choice of risks versus proven processes, is the option to apply new versus existing resources. One question would be to stick with existing procedures (Planning Commission review and Mayor and Council actions) or to implement new review boards and staff review processes.

For example, one consideration with urban design is the implementation of design guidelines. Many neighborhood plans are incorporating design guidelines into their recommendations. A design review committee has been used in a number of jurisdictions to ensure that each application meets the recommended guidelines for the applicable area of the jurisdiction.   In the alternative, established procedures of staff review, Development Review Committees, and Planning Commission review, in certain situations, can be applied to any new approval requirement generated by design guidelines.

ISSUES: The establishment of new resources, such as review boards, staff positions, and permit processes, would allow for more particular review over the new issues and guidelines established in the zoning revision. On the downside, these new resources may require additional funds of the city and more time for staff to coordinate while new regulations can be geared to fit into existing resources.

QUESTION: Should staff recommend new / different permitting / review requirements?

D. Flexibility v. Certainty

Flexible development procedures, as are currently allowed through a number of special development options (as discussed in the Optional Method paper), allow homes to be arranged closer, and on smaller lots than normally required by the zoning code. To the extent possible, flexible zoning protects the natural features and character of a neighborhood. Regulations include determination of the districts where special development is allowed, the form of the approval process, the size of the property subject to special review, and the minimum bulk requirements required for the development.

The term "flexible zoning" also includes consideration of prescriptive (what a community wants to see) versus a proscriptive (what the community does not want to see) regulation style. A common example of **pro**scriptive zoning is minimal lot standards. A zone calling for 5,000-square-foot building lots is a *minimum*, allowing people to use 10,000- or 20,000-foot building lots if they want. In other words, the City that includes such a regulation does not want to see anything smaller than 5,000 square feet but what it does want to see is not clear. Though allowed under that type of regulation, there is a big difference between 5,000 and 20,000 that could be built. A **pre**scriptive zoning regulation, however, might call for building lots with a *maximum* size of 5,000-square feet. The regulation shows that the City would like to see 5,000 square feet lots. Though 1,000 square feet would be allowed, there is not as much of a difference between 1,000 and 5,000 as there would be between 5,000 and 20,000.

With **pre**scriptive regulations, a developer is given much flexibility in the way they complete a development, as long as it meets certain goals and objectives included in the zoning code. Flexible zoning, in the alternative, does not specify a specific land use or density or parking requirement for private land. Flexible regulations simply set the rules of the marketplace. For example, flexible regulations to restrict adult theaters would not prohibit them entirely; but would permit them only outside a certain distance of a school or would require mitigation measures for them. This type of zoning is discussed in greater depth in the urban design issue paper.

Flexibility versus certainty also means the difference between using flexible design guidelines versus set zoning regulations. With design guidelines amendment procedures are easy to adjust to the evolving values and design projects of a city. Land use regulations specifying design requirements, on the other hand, must undergo a lengthy legislative change process. Guidelines cannot be as thoroughly enforced. Design guidelines are also discussed in the urban design white paper.

ISSUES: Tried and true methods of zoning enforcement are known to staff and would not require additional training (outside a renewed familiarity with any changes made to the revised zoning code). Flexible zoning, on the other hand, may allow for an easier application of the code, and more ideal development for the city.

QUESTION: Should staff consider applying any/all of these flexible zoning ideas in the revised zoning code?

E. Major Policy Prioritization

There are major policies that must, from time to time, be balanced. Other times they must be prioritized. The Urban Design White Paper has determined that the priority of the entire zoning code should be livability. In order to establish the type of community that is meets these "livable" goals, there are individual considerations to be made. Transportation, development form, location of civic and commercial uses, environmental considerations, and housing alternatives all must be balanced to create a unique and livable community.

In making minor changes to the code, all the considerations of a livable environment can be affected. Though staff will balance the following issues, wherever possible, as they are all important, there may be situations where one or more of them may have to take priority.

- Transportation
- Environment
- Housing
- Infrastructure
- Economic Development
- Public Amenities

F. Connection with Other Development Regulations

Zoning works in conjunction with other development regulations provided in the Code of the City of Rockville. Each set of regulations has their own priorities, which may or may not be in opposition to the ideals to be developed in the zoning code. In particular, these competing value codes include:

a. Chapter 5 – Buildings and Building Regulations (which includes the electrical, gas, energy conservation, property maintenance, and plumbing codes)
b. Chapter 9 – Fire Safety Code
c. Chapter 10 – Floodplain Management
d. Chapter 10.5 – Forest and Tree Preservation
e. Chapter 13.5 – Moderately Priced Housing
f. Chapter 14 – Parks and Recreation
g. Chapter 19 – Sediment Control and Stormwater Management
h. Chapter 21 – Streets and Public Improvements

The communication among staff, especially with regard to these white paper discussions, is one way to ensure that the zoning code does not negatively impact these other codes.

If a choice needs to be made between the zoning code regulations (and implications) and any/all of these additional chapters of the code, staff seeks guidance on the means to choose between/among them.

IV.   RECOMMENDATION

Additional policy decisions will be needed as the zoning revision process continues. Staff recognizes that fact and will present additional policy considerations as they come forward. As an initial step to address the known concerns, staff has made general recommendations on the policy issues and questions addressed in this paper.

A. **Streamlining**

1. **"Call Up" Review** – Staff recommends incorporating a "Call Up" review provision for items that 1) are already approved by the Planning Commission and 2) would normally be presented to Mayor and Council. In particular, this would include all special developments. The "Call Up" Review would lighten the number of matters for Mayor and Council to hear. The particulars of this process will be addressed in the follow-up meetings of staff and Mayor and Council.

2. **General Streamlining** – Staff recommends making the regulations as clear as possible with the inclusion of purpose statements that express the desires for development and will assist in interpretations.

   The Development Procedures Manual is currently being revised. After the adoption of the Zoning Ordinance is completed, the manual will be updated to reflect any changes. The manual includes flow charts to identify the process development applications must take and will include checklists to ensure that the necessary application items are provided.

3. **Administrative Approval** - Staff feels that <u>minor</u> deviations from zoning regulations may be reviewed administratively. An approval procedure is being considered for these waivers along the following guidelines:

   a. An established list of permissible administrative adjustments would be included in the Zoning Ordinance with clear guidelines to follow.
   b. When an application for one of the listed waiver requests comes to the Planning Department, a designated staff member would review the application and either grant or deny the waiver on a temporary or conditional basis.
   c. A sign would be posted on the property affected to alert neighbors of the temporary approval / denial.
   d. Through a simplified process, the Board of Appeals or the Planning Commission would review the staff's administrative approval or denial and either uphold the decision or reverse it.

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The recommendations provided in this presentation are meant to be only general guidelines from which to draw specific recommendations at following meetings. This process for administrative approvals is an example of these general recommendations. Specific considerations for an administrative approval as listed above would include 1) whether any public concern would immediately reverse the administrative approval and warrant a hearing by the reviewing board; 2) which requirements may be waived by staff and which board (who would currently hear the application) would be the reviewing body; and 3) what would be the publication requirements for board review. For example, if the Board of Appeals reverses a decision, a public hearing could not automatically be held the same night without advanced publication.

4. **Development Review conference** – The City already uses pre-application conferences for the majority of major projects on a voluntary basis through their Development Review Committee. Staff recommends including the requirement in the zoning revision for special developments. In the particular competing values recommendations, to be presented at a later date, staff will address whether to apply Development Review conference requirements to standard developments.

B. **Processes, Resources, and Flexibility** – Staff supports the application of what may be riskier processes, the inclusion of new resources, as needed, and the inclusion of flexible regulations to meet the particular needs of the new regulations. A broad educational effort must be included in the zoning adoption to teach the public, staff, and various boards about any new processes or resources that may be included. In addition, new resources may be needed to provide the flexibility and other goals of the revision.

C. **Prioritization** – Staff agrees that the top priority for all policy considerations in the revision is to preserve the health and safety of the City. Besides health and safety, no one priority, from the list of priorities given in section 3, will trump any other priority in *every* situation. Some guidance should be in the ordinance for staff, to drive individual case decisions. Established guidelines for review will aid in providing consistent recommendations. For example, with setbacks the following policy competitions may apply:

1. Tree preservation
2. Sidewalk size
3. Buffer requirements

The question proposed is whether to be more lenient in administering one requirement, if the inclusion of another requirement will better meet the social policy needs and goals of the City. For example, if the property owner is more willing to cluster their development for the benefit of open space preservation and parkland

dedication, then the City may allow greater traffic impact from the development, or grant a parking waiver.

An additional question for future discussion is whether staff should apply these prioritization guidelines solely at the special development level or whether these guidelines should apply for small subdivisions.

V. CONCLUSION

Though there are a number of competing values associated with a comprehensive zoning revision, the process will be a collaborative one. With the cooperation of different staff departments – Inspection Services, Public Works, Parks and Recreation, and Planning – these various white paper discussions will create a final document that incorporates and balances competing interests. In addition, Mayor and Council will continue to provide their guidance to direct staff in their recommendations. Initial discussions, like this white paper, will ensure that the competing policy considerations are included in the final document and will reduce future rewrites.

There are a number of policy decisions that Mayor and Council can make prior to the drafting stage of the zoning revision. These decisions will facilitate the zoning revision process and to limit the amount of time spent later in the re-writing stage.

The following questions summarize those asked earlier in this paper.

1. If there is a means to streamline any approval process, should the staff develop particular recommendations for a streamlined process?

2. If there is an innovative solution to a problem, should staff consider it, though new resources may be needed?

3. Should staff continue to provide recommendations for flexible zoning ideas to be included in the revised zoning code?

While this paper makes only general recommendations, particular recommendations will be made at the next presentation on this topic. In general, staff encourages the use of streamlined provisions and is open to more flexible regulations, though new processes will require additional training for staff and boards.

VI. ATTACHMENTS

1. Garvin, Elizabeth, "Unraveling the Mysteries of Code Writing," APA, Summer 2003.
2. Landsburg, Steven E., "Is Housing Too Expensive? Blame the Government," Slate.com, July 29, 2005.
3. Annotated Code of Maryland, Article 66B, "Land Use," §4.03
4. Kaiser, Godschalk, & Chapin, Urban Land use Planning, 1995, p. 52.